LIMITATION OF ACTIONS—AMENDMENTS RESTATING CAUSE OF ACTION—CHANGING FROM REMEDY UNDER FEDERAL ACT TO REMEDY UNDER STATE STATUTE.—The plaintiff's intestate was killed while in the employ of the defendant railway. An action was begun nine months later under the Federal Employers' Liability Act but was withdrawn, and the plaintiff more than twenty-two months after the death of the intestate amended the original complaint to comply with a Virginia statute (Va. Code, 1904, ch. 137, sec. 2903) giving a cause of action for wrongful death, providing that such action was brought within twelve months after the death. The defendant contended that this cause of action had expired since the intestate had died more than twelve months prior to the filing of the amendment. The plaintiff suffered a voluntary nonsuit, and eleven months later filed a new complaint in the same language as the original complaint and amendment. *Held,* (one judge *dissenting*) that the plaintiff could not recover. *Capps v. Atlantic Coast Line Ry.* (1922, N. C.) 111 S. E. 533.

The court held that the amendment alleged a new and independent cause of action, and thus could not relate back to the date of the original petition. This seems unnecessarily harsh on the litigant who is attempting to find the correct remedy. It is usually considered the same cause of action where the amendment is an amplification of the original complaint. *Seaboard Air Line Ry. v. Renn* (1916) 241 U. S. 290, 36 Sup. Ct. 567; *Lammars v. C. G. W. Ry.* (1919) 187 Iowa, 1277, 175 N. W. 311; see (1920) 5 IOWA L. BUL. 275. The instant case can be justified by the provision of the Virginia statute that the time in which an action is pending, after an abatement or dismissal, shall not be counted as part of the period of twelve months. After suffering a nonsuit the plaintiff still had three months in which to bring another action, since only nine months of the statutory period had elapsed before the original action was brought. For the effect of statutes of limitations on amendments changing the cause of action from equity to law, see COMMENTS (1918) 27 YALE LAW JOURNAL, 1053; (1918) 27 *ibid.* 1084.

MALICIOUS PROSECUTION—PROBABLE CAUSE A QUESTION FOR THE JURY.—The defendant instigated a criminal prosecution against the plaintiff for selling obscene and indecent literature contrary to statute. N. Y. Cons. Laws, 1909, ch. 40, sec. 1141. The plaintiff was acquitted, and sued for malicious prosecution. The court left to the jury the question of whether the book was of such a character as to justify a belief that its sale was in violation of the Penal Law. *Held,* (two judges *dissenting*) that the question of probable cause was properly left to the jury. *Halsey v. The Society for the Suppression of Vice* (1922) 234 N. Y. 1, 136 N. E. 219.

Probable cause is generally defined as the existence of a state of facts and circumstances sufficiently strong to induce the ordinary and reasonable man to entertain a belief that the accused is guilty of the crime charged. *Bowen v. Pollard* (1917) 173 N. C. 129, 91 S. E. 711. Logically this is a question for the jury inasmuch as the standard adopted is that of the average reasonable man. For reasons of policy, however, most courts regard it a question of law, or, more accurately, a question of fact to be answered by the court. This view is adopted to prevent prosecutors from being harassed because a jury would be prone to find lack of probable cause after an acquittal. *Ball v. Rawles* (1892) 93 Calif. 222, 28 Pac. 937; *Hess v. Oregon German Baking Co.* (1897) 31 Or. 503, 49 Pac. 803. The decision in the instant case is opposed to the great weight of authority, and seems objectionable on grounds of policy. For a discussion of this point see COMMENTS (1916) 25 YALE LAW JOURNAL, 328; NOTES (1920) 20 COL. L. REV. 897.

MUNICIPAL CORPORATIONS—GOVERNMENTAL FUNCTIONS—COLLECTION OF GARBAGE.—The plaintiff was injured as a result of the negligent management of a city